



AGREEMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:
- STATE AGENCY'S NAME  
DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)
- CONTRACTOR'S NAME  
U. S. FOREST SERVICE (GOVERNMENT)
2. The term of this Agreement is: DATE to (20 years from acceptance date of PROJECT)
3. The maximum amount of this Agreement is: \$ XXX,000.00  
XXX THOUSAND DOLLARS
4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference, made a part of the Agreement.

(PROJECT NAME) BOAT LAUNCHING FACILITY

Exhibit A –Construction and Operation Contract	2 pages
Exhibit B – Small Craft Launching Facility Grant Standard Terms and Conditions	10 pages
Exhibit C –NAME Boat Launching Facility Feasibility Report	X pages

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) United States of American acting by and through the U. S. FOREST SERVICE		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
STATE OF CALIFORNIA		
AGENCY NAME DEPARTMENT OF BOATING AND WATERWAYS		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING RAYNOR TSUNEYOSHI, Director		
ADDRESS 2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95815-3888		

☐ Exempt per:

CONSTRUCTION AND OPERATION CONTRACT

Small Craft Launching Facility Grant

sample

1. GRANT

- (a) The DEPARTMENT will make a grant in the amount of (~~XXX~~) THOUSAND DOLLARS (\$000,000) to the GOVERNMENT in accordance with EXHIBIT B; the grant shall not exceed this amount.
- (b) The GOVERNMENT shall deposit grant funds in an appropriate account designated in accordance with federal accounting procedures and said account shall reflect all receipts and expenditures of grant funds.

2. PROJECT COMPLETION DATE

The GOVERNMENT shall complete the PROJECT (see EXHIBIT A for definition) no later than May 1, (YEAR).

3. TERM OF CONTRACT

The term of this contract, subject to the provisions for prior termination, shall begin on the effective date of the contract and shall continue for TWENTY (20) years from the date of acceptance by the GOVERNMENT of the small craft launching facility project defined by EXHIBITS B and C.

4. BOAT LAUNCHING FEES

The GRANTEE (or any lessee or concessionaire operating under the authority of the GRANTEE) shall not charge a fee or combination of fees totaling more than \$13.00 to include but not limited to the following activities within the PROJECT AREA: vessel launch and retrieval, parking, entry, day-use, and water-use. However, such total fee may be increased annually in accordance with percentage changes in the *United States Bureau of Labor Statistics Price Index* (CPI) using the *U.S. City Average (1982-84 =*

## EXHIBIT A

100) for July 2001 (177.5) as the base for any such adjustment. Any adjustment exceeding the annual percentage change in the CPI shall be made only after the GRANTEE obtains the written approval of the DEPARTMENT.

### 5. SPECIAL PROVISIONS

Notices required between the parties shall be deemed to have been given when mailed to the respective addresses herein, first-class postage fully prepaid thereon.

SMALL CRAFT LAUNCHING FACILITY  
CONSTRUCTION GRANT AND OPERATION  
CONTRACT

STANDARD TERMS AND CONDITIONS

ARTICLE I - DEFINITIONS

- A. CONTRACT means the contract to which these standard terms and conditions are appended.
- B. PROJECT means the small craft launching facility described or constructed pursuant to this CONTRACT.
- C. PROJECT AREA means the area delineated in EXHIBIT C within which the PROJECT will be undertaken.
- D. PROJECT COSTS mean those engineering, labor, equipment, materials and any other costs which are reasonable in amount and which are necessarily incurred by the GOVERNMENT for the purpose of completing the PROJECT and are covered by the GRANT; however, such PROJECT COSTS shall not include indirect or overhead charges claimed by the GOVERNMENT and shall not include any expenses incurred prior to the effective date of this CONTRACT.
- E. GRANT means a grant provided pursuant to Harbors and Navigation Code Section 72.5 to finance all or part of the PROJECT COSTS.
- F. COMMISSION means the BOATING AND WATERWAYS COMMISSION advisory board.

ARTICLE II - DISBURSEMENT OF GRANT

- A. Conditions Precedent - The DEPARTMENT shall have no obligation to disburse money under this CONTRACT unless and until the GOVERNMENT certifies to the DEPARTMENT that the GOVERNMENT has title to, or adequate interests in, the real property comprising the PROJECT AREA, including but not limited to the following:
  - 1. land access to the PROJECT AREA by a maintained way, and
  - 2. a right of passage over a waterway, open to the public, between the PROJECT and navigable waters, and
  - 3. easements or other rights of way outside the PROJECT AREA to provide utilities and services to the PROJECT.

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- B. The DEPARTMENT shall have no obligation to disburse any of the GRANT to cover construction costs unless and until the GOVERNMENT demonstrates that it has acquired permits necessary to construct and operate the PROJECT.
- C. The Disbursement Procedure for the GRANT is as follows:
1. The DEPARTMENT may transfer the GRANT (or any portion thereof) to the GOVERNMENT upon the written request of the GOVERNMENT for such transfer; the transfer may be made prior to the GOVERNMENT's going to bid on the construction of the PROJECT or at any time thereafter.
  2. All GRANT funds transferred by the DEPARTMENT to the GOVERNMENT shall:
    - a. remain the property of the DEPARTMENT until such funds are obligated by the GOVERNMENT in accordance with the terms and conditions of this CONTRACT.
    - b. be disbursed by the GOVERNMENT for the sole purpose of paying those PROJECT COSTS incurred after the effective date of this CONTRACT; and
    - c. be disbursed by the GOVERNMENT upon receipt and approval of a correct Construction Contractor's invoice. The GOVERNMENT shall provide Construction Contractor's invoices and any support documentation to the DEPARTMENT when payment is made to the Construction Contractor.
  3. The DEPARTMENT reserves the right to require prior written approval before the GOVERNMENT makes payment to a Construction Contractor if the DEPARTMENT determines the GOVERNMENT has made payment for incomplete and/or substandard work by the Construction Contractor under this specific CONTRACT.
  4. The DEPARTMENT may require prior written approval for any expenditure of GRANT funds if the GOVERNMENT fails to comply with any of the conditions and provisions of this CONTRACT.
- D. The GOVERNMENT shall, within 60 days of approval of this CONTRACT, provide the DEPARTMENT with a Project Schedule showing the proposed dates of the following PROJECT phases or milestones: Beginning and ending of GOVERNMENT selection of the PROJECT design consultant; DEPARTMENT approval of the consultant contract; beginning and ending of PROJECT design; DEPARTMENT approval of final plans and specifications; beginning and ending of GOVERNMENT advertising of PROJECT for bids; PROJECT bid opening date; DEPARTMENT approval of construction contract; beginning and ending of PROJECT construction; and, acceptance of PROJECT by the GOVERNMENT.

ARTICLE III - RETURN OF UNEXPENDED GRANT FUNDS

All GRANT funds transferred by the DEPARTMENT to the GOVERNMENT shall be returned to the DEPARTMENT within SIXTY (60) days of approval by the DEPARTMENT of PROJECT acceptance if such funds are not expended by the GOVERNMENT prior to the date of acceptance.

ARTICLE IV - CONSTRUCTION OF PROJECT

- A. The GOVERNMENT shall obtain from the DEPARTMENT advance written approval for the following:
  - 1. All bid documents prior to advertisement including plans and specifications,
  - 2. All construction change orders that increase or decrease the contract amount by \$5,000 or more,
  - 3. Acceptance of the PROJECT by the GOVERNMENT.
- B. The GOVERNMENT shall notify the DEPARTMENT of the award of all contracts.
- C. Plans and specifications for the construction of the PROJECT shall provide for all PROJECT facilities set forth in EXHIBIT C.
- D. All contracts for construction of the PROJECT shall:
  - 1. Be awarded in accordance with all applicable laws and regulations.
  - 2. Contain the following clause: "Representatives of the Department of Boating and Waterways shall be allowed access to all parts of the construction work."
  - 3. Contain a clause that there shall be no discrimination against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contractor and subcontractors shall ensure that the evaluations and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (GC Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (CCR Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing GC Section 12990 (a-f), set forth in

Chapter 5, Div. 4 of Title 2 of the CCR, are incorporated into this CONTRACT by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

4. Contain a clause that the contractor shall comply with all air pollution and environmental control rules, regulations, ordinances and statutes which apply to the PROJECT and any work performed pursuant to the contract.
  5. Contain a clause that requires the contractors to ensure the structural integrity and safety of the PROJECT.
- E. The GOVERNMENT's personnel and construction of the PROJECT shall be under the supervision of qualified inspectors.
- F. Inspection reports and related inspection data shall at all reasonable times be accessible to the DEPARTMENT personnel, and on request copies of such reports and data shall be provided to the DEPARTMENT by the GOVERNMENT.

#### ARTICLE V - OPERATION OF PROJECT

- A. The GOVERNMENT shall operate the PROJECT and all other improvements placed in the PROJECT AREA as a recreational boat launching facility and shall not, during the term of the CONTRACT, sell, exchange, mortgage, or hypothecate in any manner all or any portion of the real property within the PROJECT AREA, or required therewith, without the advance written approval of the DEPARTMENT. The PROJECT AREA shall be open to all recreational vessels, including vessels powered by 2-stroke and 4-stroke gasoline engines, at all times during the term of the contract except as approved by the DEPARTMENT and COMMISSION. Notwithstanding Harbors and Navigation Code Section 660, any non-emergency restrictions related to time-of-day use, speed zones, special-use areas, or pollution control measures in the PROJECT AREA which result in closure or partial closure of the waterway to any recreational vessel shall be subject to prior approval by the DEPARTMENT and COMMISSION. Failure to obtain prior approval of the DEPARTMENT and COMMISSION for such restrictions shall constitute a breach of this contract and subject the GOVERNMENT to the penalties set forth in Paragraph H.
- B. The GOVERNMENT shall maintain and repair any and all buildings, structures or other improvements which are now located in the PROJECT AREA and which may hereafter be constructed thereon, and the DEPARTMENT shall not be liable for any costs of such maintenance, management, control or operation.

- C. The PROJECT shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
- D. All facilities located within the PROJECT AREA shall be maintained and operated with due regard to public safety and in accordance with all applicable laws, ordinances, and regulations. All contracts relating to the operation of the PROJECT shall include a nondiscrimination and compliance clause as referenced on ARTICLE IV-C3 of this CONTRACT.
- E. At the discretion of the DEPARTMENT, the GOVERNMENT shall repay the DEPARTMENT for any PROJECT COSTS covered by the GRANT made herein if any of the following occur:
1. The PROJECT is discontinued as a recreational boat launching facility; or
  2. The GOVERNMENT fails to maintain or operate the PROJECT in accordance with the terms of this CONTRACT; or
  3. The GOVERNMENT terminates this CONTRACT pursuant to ARTICLE XV.
- The amount of the repayment shall be determined by the DEPARTMENT on a prorated unexpired term basis and the repayment shall be made no later than NINETY (90) days following receipt by the GOVERNMENT of a written request by the DEPARTMENT for such repayment.
- F. The GOVERNMENT shall establish a reserve account as follows:
1. GOVERNMENT shall deposit twenty-five percent (25%) of total annual boat launching fees (if no boat launching fee, then parking, entry, day use, water use, or other such fees) generated from the PROJECT into a joint account with the DEPARTMENT.
  2. Upon prior approval by the DEPARTMENT, GOVERNMENT may withdraw funds from the reserve account to pay for major maintenance of, and capital improvements to, the PROJECT.
  3. GOVERNMENT shall provide annual reserve account records to the DEPARTMENT on or before April 1 of each year and make account records available to the DEPARTMENT upon demand.
  4. If GOVERNMENT fails to establish a reserve account, GOVERNMENT shall not be eligible to receive future grant funds from the DEPARTMENT for the PROJECT.
  5. Upon termination of this CONTRACT, any funds remaining in the reserve account shall be expended in the PROJECT AREA prior to the GOVERNMENT requesting any additional grant funds for the same PROJECT AREA.
- G. The GOVERNMENT that has entered into, or will enter into a concession agreement for operation of the PROJECT shall require that the operation and maintenance of the facility by the concessionaire be continued with, and place into the concessionaire agreement, the following provisions:



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1. Fees paid to the GOVERNMENT by the concessionaire (usually a percentage of gross receipts) may only be for “reasonable administrative charges” so as not to motivate the GOVERNMENT to turn over the operation and maintenance of the PROJECT for purely profit considerations.
  2. The GOVERNMENT shall collect from concessionaire twenty-five percent (25%) of total annual boat launching fees (if no boat launching fee, then parking, entry, day use, water use, or other such fees) generated from the PROJECT. Funds shall be deposited in an account described in Paragraph E above. A maximum of seventy-five percent (75%) of fees shall be collected and applied towards the routine maintenance, operation of the PROJECT, overhead, and profit.
  3. Boating fees paid to the concessionaire for use of the facility will be no greater than those allowed in this CONTRACT.
  4. The concessionaire shall operate the PROJECT and all other improvements placed in the PROJECT AREA as a recreational boat launching facility.
  5. The PROJECT shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
  6. All DEPARTMENT signs shall be kept permanently in place.
- H. In the event the GOVERNMENT has failed to obtain prior approval of the DEPARTMENT and COMMISSION for a time-of-day, speed zone, special-use area, or pollution control measure which restricts the PROJECT AREA, or results in its closure or partial closure, to any form of recreational vessel, the DEPARTMENT may determine the percentage of boaters affected and, with the concurrence of the COMMISSION, may request the GOVERNMENT to repay the grant money on a prorated unexpired term basis for that percentage of all PROJECT COSTS covered by the GRANT. The GOVERNMENT shall make such repayment within ONE HUNDRED EIGHTY (180) days of the close of the fiscal year within which a DEPARTMENT requests repayment. Repayment shall be made according to a schedule determined by the DEPARTMENT after consultation with the GOVERNMENT.

ARTICLE VI - ADOPTION OF RULES AND REGULATIONS FOR CONCESSION  
AGREEMENT

The GOVERNMENT agrees that such concession agreements as may be entered into, and such rules and regulations as may be promulgated by it for the use and enjoyment of the PROJECT AREA and all facilities therein, shall conform to and be consistent with the rules, regulations, and policies promulgated by the DEPARTMENT and generally applicable to the DEPARTMENT small craft launching facilities grant program; further, such concessions agreements shall have the written approval of the DEPARTMENT prior to award of a

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concession agreement by the GOVERNMENT. Also, such concessions agreements should be entered into only when the GOVERNMENT can demonstrate that private sector operation is the best available alternative. Concession agreements of a short-term duration (five years or less) are preferred, with renewal based upon performance reviews by both the governmental agency and the DEPARTMENT. If a long-term concession agreement is entered into, the GOVERNMENT shall include in the concession agreement a capital investment requirement for the concessionaire.

#### ARTICLE VII - INSTALLATION OF OTHER FACILITIES

- A. The GOVERNMENT may at its own expense place or cause to be placed within the PROJECT AREA any structure or structures, or make any alterations or improvements in addition to those set forth herein, provided that such facilities:
1. shall be constructed, maintained and operated for the use, enjoyment, protection and service of the public,
  2. do not directly or indirectly reduce the service capacities for the boating public called for in EXHIBIT C, including the sanitary and parking facilities, and
  3. have the prior written approval of the DEPARTMENT.
- B. The DEPARTMENT shall not be obligated to make or cause to be made any alterations, improvements or repairs to any facilities within the PROJECT AREA during the term of this CONTRACT in addition to the original construction of the PROJECT as provided for herein.

#### ARTICLE VIII - SIGN REFERRING TO STATE FINANCING

The GOVERNMENT shall cause a permanent sign to be installed within the PROJECT AREA, which shall include a statement that the PROJECT was financed by the DEPARTMENT. The sign may contain additional statements which recognize the participation of other government agencies in the PROJECT. The sign shall be installed before the PROJECT is made available to the public. The location and makeup of the sign, including the dimensions, materials and lettering, shall be approved by the DEPARTMENT.

#### ARTICLE IX - DIRECTIONAL SIGNS

The GOVERNMENT shall at the direction of the DEPARTMENT cause permanent directional signs to be installed so as to provide adequate directions to the public for reaching the PROJECT AREA. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits. The locations and the makeup of the signs, including the dimensions, materials and lettering, shall be as approved by the DEPARTMENT.

#### ARTICLE X - WAIVER OF RIGHTS

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It is the intention of the parties hereto that from time to time either party may waive certain of its rights under this CONTRACT, to the extent allowable by Federal law. Any waiver at this time by either party hereto of its rights with respect to a default or any other matter arising in connection with CONTRACT, shall not be deemed to be a waiver with respect to any other default or matter.

#### ARTICLE XI - REMEDIES NOT EXCLUSIVE

The use by either the DEPARTMENT or the GOVERNMENT of any remedy specified in the CONTRACT for the enforcement of the CONTRACT is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

#### ARTICLE XII - OPINIONS AND DETERMINATIONS

Where the terms of this CONTRACT provide for action to be based upon the opinion, judgment, approval, review or determination of either the DEPARTMENT or GOVERNMENT, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

#### ARTICLE XIII - SUCCESSORS AND ASSIGNS OBLIGATED

This CONTRACT and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

#### ARTICLE XIV - ASSIGNMENT

No assignment or transfer of this CONTRACT or any part hereof, rights hereunder, or interest herein by GOVERNMENT shall be valid unless and until it is approved in writing by the DEPARTMENT and made subject to such reasonable terms and conditions as the DEPARTMENT may impose.

#### ARTICLE XV - TERMINATION BY THE GOVERNMENT

The GOVERNMENT may terminate this CONTRACT at any time subject to the penalty provided in ARTICLE V-E and upon a THIRTY (30) day written notice to the DEPARTMENT.

#### ARTICLE XVI - CONTRACT RESTRICTIONS

- A. Nothing herein shall be construed as (1) obligating the GOVERNMENT to expend, or (2) involving the GOVERNMENT in any contract or other obligation for the future payment of, money in excess of appropriations authorized by law and administratively allocated for this work.
- B. No member of or delegate to Congress or Resident Commissioner shall be admitted to share any part of this CONTRACT, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this CONTRACT if made with the corporation for its general benefit.

#### ARTICLE XVII - PRIOR TERMINATION

The CONTRACT shall terminate on the date specified in EXHIBIT A, Paragraph 2 of this CONTRACT if (1) the GOVERNMENT has not met all conditions precedent to disbursement under this CONTRACT by such date, or (2) if no disbursement by the DEPARTMENT of GRANT funds occurs by such date.

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#### ARTICLE XVIII- APPROVAL

The CONTRACT is of no force or effect until signed by both parties and approved by the Department of General Service, if required. GOVERNMENT may not commence performance until such approval has been obtained.

#### ARTICLE XIX - AUDIT

All contracts entered into by the GOVERNMENT involving an expenditure of GRANT funds shall contain a provision which indicates that the contracting parties shall agree that the DEPARTMENT, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. GOVERNMENT agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, contracting parties agree to include a similar right to the State to audit records and interview staff in any subcontract related to performance of this CONTRACT. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).

#### ARTICLE XX – CERTIFICATION CLAUSES

The *CONTRACTOR CERTIFICATION CLAUSES* contained in the document CCC201 are hereby incorporated by reference and made a part of this CONTRACT by this reference as if attached hereto.

#### ARTICLE XXI - CHILD SUPPORT COMPLIANCE ACT

"For any contract in excess of \$100,000, the contractor acknowledges in accordance with, that:

- A. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.
- B. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

#### ARTICLE XXII. - UNENFORCEABLE PROVISION

In the event that any provision of this CONTRACT is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this CONTRACT have force and effect and shall not be affected thereby.

#### ARTICLE XXIII- UNION ORGANIZING

For all contracts, except fixed price contracts of \$50,000 or less.

GOVERNMENT, by signing this GRANT, hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this contract. Furthermore, GOVERNMENT, by signing this agreement, hereby certifies that:

- A. No state funds disbursed by this GRANT will be used to assist, promote or deter union organizing.
- B. GOVERNMENT shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- C. GOVERNMENT shall, where state funds are not designated as described in (2) above, allocate, on a pro-rata basis, all disbursements that support the grant program.
- D. If GOVERNMENT makes expenditures to assist, promote or deter union organizing, GOVERNMENT will maintain records sufficient to show that no state funds were used for those expenditures, and that GOVERNMENT shall provide those records to the Attorney General upon request.